

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	Facility ID No. 83396
Double O South Carolina Corporation)	NAL/Acct. No. MB-201241410009
)	FRN: 0011511169
Licensee of Station WWNQ(FM),)	File No. BRH-20110728AES
Forest Acres, South Carolina)	

FORFEITURE ORDER

Adopted: July 27, 2012

Released: July 27, 2012

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000), to Double O South Carolina Corporation (“Licensee”), licensee of Station WWNQ(FM), Forest Acres, South Carolina (“Station”), for its willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”)¹ by failing to properly maintain a public file for the Station.

II. BACKGROUND

2. On July 28, 2011, Licensee filed the captioned application to renew the license of the Station (“Application”). Section III, Item 3, of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 of the Rules has been placed in the station’s public inspection file at the appropriate times. Licensee indicated “No” to that certification, explaining in an Exhibit that the Station’s public file was missing quarterly issues/programs lists for the first and third quarters of 2005; the second, third and fourth quarters of 2008; all of 2009; and the first quarter of 2010.² Subsequently, Licensee reconstructed the missing reports and affirmed that they are now located in the Station’s public inspection file.

3. On April 10, 2012, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of ten thousand dollars (\$10,000) to Licensee for its violations.³ On May 10, 2012, in response to the NAL, Licensee filed a request for cancellation or reduction of the proposed forfeiture (“Request”). In support of its Request, Licensee argues that: (1) Commission precedent in similar circumstances is to admonish the licensee or issue a reduced penalty; (2) the violations were not willful or repeated; and (3) Commission precedent has treated instances of more serious infractions less severely.

¹ 47 C.F.R. § 73.3526.

² Application, Exhibit 12.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. MB-201241410009 (MB April 10, 2012) (“NAL”).

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (the “Act”),⁴ Section 1.80 of the Rules,⁵ and the Commission’s *Forfeiture Policy Statement*, which establish a base forfeiture amount of \$10,000 for violation of Section 73.3526.⁶ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷

5. Licensee does not dispute that it failed to maintain a complete public file for the Station, but raises several arguments as to why the forfeiture should be cancelled or reduced. First, Licensee argues that the imposition of a \$10,000 forfeiture for the violation is inconsistent with Commission precedent. Licensee cites several Audio Division decisions and one Commission-level case in which licensees received smaller forfeiture amounts.⁸ However, the cited decisions demonstrate a consistent policy of reducing the forfeiture amount from the base \$10,000 penalty for less extensive patterns of violations. Licensee had ten missing issues/programs lists over the years a five year span from 2005 – 2010. The full \$10,000 forfeiture is appropriate and consistent with precedent on comparable patterns of violations.⁹ Licensee also cites several Video Division decisions only admonishing a licensee for issues/programs lists violations.¹⁰ These cases are distinguishable or are consistent with the treatment of a less serious level of violations as described above.

6. We reject Licensee’s additional argument that so long as re-creations of the issues/programs lists are provided at the time of renewal, no forfeiture is warranted. Issues/programs lists “are a significant and representative indication that a licensee is providing substantial service to meet the

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). (“*Forfeiture Policy Statement*”).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ *Opus Broadcasting Tallahassee, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 2012 WL 1454051 (MB 2012) (imposing a \$4,000 forfeiture for seven missing issues/programs lists over a less than two-year span); *Saga Communications of Illinois*, Forfeiture Order, 24 FCC Rcd 2479 (MB 2009) (imposing a \$3,000 forfeiture for four missing lists during one year); *Citadel Broadcasting Co.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 7083 (2007) (imposing a \$1,000 forfeiture for two missing lists for one year at one station, while separately issuing two additional \$10,000 forfeitures for public inspection file violations at other stations).

⁹ *See, e.g., Urban Radio III, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6376 (MB 2006) (issuing a \$10,000 forfeiture for eight missing issues/programs lists over a three-year span); *Faith Baptist Church*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146 (MB 2007) (issuing a \$10,000 forfeiture for eleven missing issues/programs lists over a three-year span). *See also WHLG FM, LLC*, Memorandum of Opinion and Order and Notice of Apparent Liability for Forfeiture, 2012 WL 1422948 (MB 2012), cited by Licensee, in which the Bureau imposed the base \$10,000 forfeiture for 22 missing issues/programs lists over a period of more than five-years.

¹⁰ *Louis Martinez Family Group, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 17899 (MB 2008) (admonishing the licensee for providing issues/programs lists that were timely placed in the public file but were lacking required information); *CMCG Portland License LLC*, Letter, 23 FCC Rcd 11955 (MB 2008) (admonishing the licensee for placing issues/programs lists in the public file late); *Tribune Broadcast Holdings*, Letter, 21 FCC Rcd 14070 (MB 2007) (admonishing the licensee for two missing issues/programs lists).

needs and interests of its community.”¹¹ As stated in the NAL, the purpose of maintaining a public file is “to provide the public with timely information about the station at regular intervals.”¹² Further, in the *Forfeiture Policy Statement*, the Commission found that the omission of even a single item (the issues/programs list) from the public inspection file is a serious violation because it “diminishes the public’s ability to determine and comment on whether the station is serving the community.”¹³ Even if the lists were completed and eventually placed in the public file, as Licensee contends, the record is clear that they were unavailable to the public for much of the license term. Therefore, the violation is not mitigated by Licensee’s perception that no harm was committed by the omission of the lists.¹⁴ While we recognize Licensee’s efforts to remedy the errors, corrective action taken to come into compliance with the Rules is expected.¹⁵

7. Licensee next contends that the NAL failed to adequately explain how its violations were willful and repeated and that, regardless, the violations were in fact not willful or repeated. Licensee argues that its violations were not willful because it did not consciously or deliberately omit the lists from the public file. In addition, Licensee claims its violations were not repeated because it acted immediately to re-create the lists upon learning of their omission. However, Licensee’s definitions of willful and repeated are inconsistent with the Commission’s interpretation of those terms.

8. Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹⁶ Violations resulting from inadvertent error are willful violations.¹⁷ Licensee has failed to justify why a departure from precedent is justified.¹⁸ Thus, Licensee’s failure to properly maintain the Station’s public file constituted a “willful” violation of Section 73.3526 of the Rules, irrespective of its lack of intent.

¹¹ See *Normandy Broadcasting Corp. and Lawrence N. Brandt*, Initial Decision, 8 FCC Rcd 1, 14 (ALJ 1992) (citing *Formulation of Policies and Rules to Broadcast Renewal Applicants*, Third Further Notice of Inquiry and Notice of Proposed Rule Making, 4 FCC Rcd 6363, 6365 (1989)).

¹² NAL at 2.

¹³ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

¹⁴ See *Southern Communications Corp.*, Letter, 23 FCC Rcd. 1875, 1877 (MB 2008) (“The public file provides citizens with important information about broadcasters’ service to their communities . . . , [and] the FCC will not tolerate less than diligent efforts to ensure the accuracy and timeliness of that information”) (citing “FCC Fines 28 Radio Stations for Public File Violations,” News Release, (Oct. 8, 2003)) (“*Southern Communications*”).

¹⁵ See *Pittman Broadcasting, LLC*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee’s rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

¹⁶ 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

¹⁷ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California*, 6 FCC Rcd at 4387 (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”).

¹⁸ Licensee expressed disagreement with the Commission’s approach but did nothing more to support its position. Request at 6 n. 7. Licensee’s statement that “no federal court has ever affirmed the Commission’s approach” (Request at 6) has no bearing here because orders such as this one do not require a court’s approval to take effect. See 47 C.F.R. § 1.102(b).

9. Further, Commission precedent clearly holds that “repeated” means that the act was committed or omitted more than once, or lasts more than one day. Specifically, Section 312(f)(1)¹⁹ of the Act defines “repeated” as “the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day.”²⁰ In this case, Licensee’s violations of Section 73.3526 of the Rules spanned five years. Accordingly, we find that Licensee’s violations were also repeated within the meaning of the Act.²¹

10. Finally, we reject Licensee’s final argument that because other, “more serious” violations are punished with less severe means, monetary forfeiture is inappropriate. Licensee cites a case of a false certification in a license application where the Bureau issued an admonishment rather than forfeiture.²² While the Commission indeed takes false certifications very seriously, Licensee’s subjective determination that the false certification in that case is more serious than its own longstanding public file violation is unpersuasive. As a matter of administrative law, the Commission, and the Bureaus operating pursuant to delegated authority, have discretion over decisions “whether to issue a warning or assess a forfeiture based on the nature and circumstances of the specific violation.”²³ The NAL is consistent with the Commission’s Rules, the *Forfeiture Policy Statement*, and precedent.

11. We have considered Licensee’s Request in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully and repeatedly violated Section 73.3526 of the Rules. Furthermore, we find that Licensee’s arguments do not support cancellation or reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission’s Rules,²⁴ that Double O South Carolina Corporation, SHALL FORFEIT to the United States the sum of \$10,000 for willfully and repeatedly violating Section 73.3526 of the Commission’s Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission’s Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²⁵ Payment of the proposed forfeiture must be made by check or similar

¹⁹ 47 U.S.C. § 312(f)(1).

²⁰ *Id.* See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of “repeated” to Sections 312 and 503(b) of the Act).

²¹ See, e.g., *Saga Communications of Illinois, Inc.*, Forfeiture Order, 23 FCC Rcd 18041, 18043 (MB 2008) (rejecting argument that the public file violation only occurred “on the day [the licensee] learned the lists were not in the file” and finding that the violation lasting “several years” constituted a repeated violation).

²² *John Jason Bennett*, 20 FCC Rcd 17193 (MB 2005) (finding that the lack of apparent motive and intent to deceive obviated the need for stricter sanctions).

²³ *Forfeiture Policy and Amendment of Section 1.80 of the Commission’s Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17102 (1997) (rejecting proposal to always issue a warning to first-time violators, except in particular cases, because doing so “would greatly undermine the credibility and effectiveness of our overall compliance efforts”). See C.F.R. § 1.80(b)(4), Note (“The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided for in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute”).

²⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

²⁵ 47 U.S.C. § 504(a).

instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code).²⁶ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Eric.Cohen@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, DC 20554.²⁷

14. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to Double O South Carolina Corporation, 75 Rockefeller Plaza, 23rd Floor, New York, NY 10019, and to its counsel, Mark B. Denbo, Esq., Drinker Biddle & Reath LLP, 1500 K Street, N.W., Suite 1100, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁶ See 47 C.F.R. § 1.1914.

²⁷ *Id.*